Supreme Court, U.S.
FILED
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Case No. _____

IN THE UNITED STATES SUPREME COURT
October Term, 1997

JOHN BAYLISS, KAREN RAE QUARLES, and all pawn customers similarly situated,

PETITIONER,

v.

CITY OF TULSA, TULSA CITY COUNCIL, B.S. ROBERTS, DARLA HALL, MIKE PATRICK, GARY WATTS, ROBERT NELSON, JAMES HOGUE, SR., JOHN BENJAMIN, VICKIE CLEVELAND, DEWEY BARTLETT, JR., TULSA POLICE DEPARTMENT, RON CUNNINGHAM, RON PALMER, OKLAHOMA PROPERTY RECOVERY ASSOCIATION,

RESPONDENTS.

On Petition For Writ Of Certiorari
To The Tenth Circuit Court Of Appeals

PETITION FOR WRIT OF CERTIORARI

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59 pp

Question Presented

Are pawn customers' constitutional rights violated by the municipal code requirement that pawnbrokers report all personal information on every customer in every transaction?

Is Oklahoma Statute, title 59 § 1515(c) being unconstitutionally applied by the City of Tulsa's requirement of reporting personal vitae on each pawn loan?

Is requiring the reporting of customer vitae on all pawn customers an unconstitutional practice, violating the customers' constitutional and privacy rights?

Parties

All parties are listed in the caption.

Table of Contents

Question Presented i

Parties ii

Table of Contents iii

Table of Authorities iv
Cases iv
Law iv

Jurisdictional Statement 1

Constitutional Provisions,
Statutes and Ordinances Involved 2

Statement of the Case 3

Argument 6
THE WHOLESALE SEIZURE OF PAWN CUSTOMER PERSONAL INFORMATION IS NOT A PROBLEM SPECIFIC TO OKLAHOMA. 6
THE DISTRICT COURT AND TENTH CIRCUIT MISAPPLIED EXISTING CASELAW AND THE RULING IN THIS CASE IS IN CONFLICT WITH PREVIOUS TENTH CIRCUIT DECISIONS AS WELL AS SUPREME COURT RULINGS. 8

Conclusion 16

Appendices . . . . . App. 1

Table of Authorities

Cases

California Bankers Assn. v. Shultz, 416 U.S. 21, 94 S.Ct. 1494, 39 L.Ed.2d 812 (1974) 8, 13

S&S Pawn Shop, Inc. v. City of Del City, 947 F.2d 432 (10th Cir. 1991) 8, 9, 11, 12

Smith v. Maryland, 442 U.S. 735, 99 S.Ct. 2577, 61 L.Ed.2d 220 16

United States v. Miller, 425 U.S. 435 (1976) ... 9, 14, 15

Winters v. Board of County Commissioners, 4 F.3d 848 (10th Cir. 1993) 8, 9

Law

28 U.S.C. § 1291 1

42 U.S.C. § 1983 1

Bank Secrecy Act of 1970; Pub. L 910508, 84 Stat. 1114, 12 U.S.C. §§ 1730d, 1829b, 1951-1959, and 31 U.S.C. §§ 1051-1062, 1081-1083, 1101-1105, 1121-1122 13

Colo. Stat. tit 12, art. 56, § 12-56-103 ..... 2, 7

D.C. Stat. tit. 2, ch. 19, § 2-1911 ..... 2, 7

Fla. Stat. tit. 33, ch. 539.001(8)(9) 2, 8

Ill. Stat. ch. 205, Act 510, § 7 . . . . . 2, 7

Mass. Stat. tit. 20, ch. 140, § 79 . . . . . 2, 7

N.M. Stat. ch. 56, Art. 12, § 9 . . . . . 2, 7

Nev. Stat. tit. 54, ch. 646.030 . . . . . 2, 7

Okla. Stat. tit 59, § 1515(c) . . . . . i, 2, 4, 6

Oklahoma Pawnshop Act, Okla Stat. tit. 59, §§ 1501-1515 . . . . . 3, 4

Ore. Stat. tit. 54, ch. 726, § 285 . . . . . 2, 7

Tenn. Stat. tit. 45, ch. 6, § 209 . . . . . 2, 7

Tulsa, OK., Code tit. 21 ch. 11 . . . . . i, 3

U.S. Const. amend. IV 1, 10

U.S. Const. amend. XIV 1

Neither the District Court for the Northern District of Oklahoma nor the Tenth Circuit Court of Appeals orders are published. A full and complete copy of these orders is attached hereto in the Appendix.

Jurisdictional Statement

Jurisdiction of this action in the Northern District of Oklahoma Federal District Court is pursuant to the United States Constitution, particularly the provisions of the Fourth and Fourteenth Amendments, and the laws of the United States, particularly under the Civil Rights Act, 42 U.S.C. § 1983. Jurisdiction in the Tenth Circuit Court of Appeals is pursuant to 28 U.S.C. § 1291. Jurisdiction in the Supreme Court of the United States is pursuant to Supreme Court Rule 10(a). The relevant filing dates which establish the time line for this appeal are:

Final order entered in district court	9/16/96
Final order entered in Tenth Circuit	8/26/97.

Constitutional Provisions,
Statutes and Ordinances Involved

Citations below, full text beginning at App. Page 8.

I. Okla. Stat. tit 59, § 1515(C)

II. Tulsa, OK., Code Ch. 11 § 1104(C)

III. Colo. Stat. tit 12, art. 56, § 12-56-103

IV. D.C. Stat. tit. 2, ch. 19, § 2-1911

V. Fla. Stat. tit. 33, ch. 539.001(8)(9)

VI. Ill. Stat. ch. 205, Act 510, § 7

VII. Mass. Stat. tit. 20, ch. 140, § 79

VIII. Nev. Stat. tit. 54, ch. 646.030

IX. N.M. Stat. ch. 56, Art. 12, § 9

X. Ore. Stat. tit. 54, ch. 726, § 285

XI. Tenn. Stat. tit. 45, ch. 6, § 209

Statement of the Case

This action was brought by two pawn shop customers, John Bayliss, Jr. and Karen Rae Quarles, on behalf of all pawn customers similarly situated (collectively "pawn customer[s]" or "Plaintiffs") regarding the record keeping and reporting requirements of pawn transactions as set forth in the Oklahoma Pawnshop Act, Okla Stat. tit. 59, § 1501 et seq., and the Tulsa Municipal Code, Tulsa, OK., Code tit. 21 ch. 11. This action was filed March 13, 1996. Defendants City of Tulsa, Ron Cunningham, and Ron Palmer (collectively "Tulsa" or "Defendants") filed their Motion to Dismiss July 19, 1996, asserting that Plaintiffs had failed to state a claim upon which relief can be granted. That motion was granted by the trial court on September 16, 1996. The Tenth Circuit Court of Appeals affirmed that ruling on August 26, 1997, and this Petition ensued.

The facts of this case are undisputed and clearly outlined in Plaintiffs' First Amended Complaint and Response to Defendants' Motion to Dismiss. The Oklahoma Pawnshop Act requires pawnbrokers to gather and make available property and personal information on every pawn customer in every transaction. 59 O.S.A. § 1515(C). Oklahoma pawn customers made 1.57 million pawns in 1995 representing more than $90,000,000.00 in loans. Less than one-tenth of one percent (0.00055) of those loans involved allegedly stolen property.[1] The Tulsa Police Department routinely seizes and/or The City of Tulsa requires the delivery of copies of each and every pawn customer's information. The Tulsa Police Department collates the personal information of every pawn customer into a computer database or other record keeping media. Such personal information includes name, address, race, sex, weight, height, date of birth and either

[1] The pawning industry statistics for the State of Oklahoma for 1984-1995 can be found at Appendix page 32.

identification number of the person making the pawn transaction as verified by either a state-issued identification card, driver's license or federal government-issued identification card or by readable fingerprint of right or left index finger. The personal information of every pawn customer is accessible to Tulsa police officers through that database as well as to other state and federal law enforcement agents through the Tulsa Police Department and/or the Oklahoma Property Recovery Association, a private entity, under the leadership of Tulsa police officers. In addition, Plaintiffs have been uncontested in the assertion that pawn customers are financially disadvantaged and are generally excluded from mainstream credit markets because of low and unstable incomes.[2]

---

[2]Economist John P. Caskey, in a research paper about pawnbroking written for the Federal Reserve Bank, found "pawnshops are a source of credit to millions of low-income Americans who are excluded from more mainstream financial markets." See Appendix page 26.

Argument

Every pawn customer in 1.57 million loans in the State of Oklahoma is a criminal suspect. Every pawn customer in 1.57 million loans in a state of 3.4 million is being monitored and tracked by police and sheriff's departments. Law enforcement personnel, and everyone with access to law enforcement databases, is entitled to access personal and financial information of every Oklahoma pawn customer in 1.57 million loans. So says the United States Federal District Court for the Northern District of Oklahoma and so says the Tenth Circuit Court of Appeals.

THE WHOLESALE SEIZURE OF PAWN CUSTOMER PERSONAL INFORMATION IS NOT A PROBLEM SPECIFIC TO OKLAHOMA.

While statutes in Oklahoma merely require the pawnbroker to "make available" information on all his customers, Okla. Stat. tit. 59, § 1515(C), the City of Tulsa requires the delivery of reports on pawn customers. Many

states require the routine delivery of information on all pawn customers in all pawn transactions to law enforcement.

Colorado requires the weekly delivery of reports containing all the personal information of every pawn customer, Colo. Stat. tit. 12, art. 56, § 103(7). The state of Massachusetts also requires a weekly report on pawn customers including a photograph of the customer, Mass. Stat. tit. 20, ch. 140, § 79. New Mexico, Oregon, and Tennessee require delivery of reports on pawn customers within two to three days. N.M. Stat. ch. 56, Art. 12, § 9; Ore. Stat. tit. 54, ch. 726, § 285; Tenn. Stat. tit. 45, ch. 6, § 209.

The District of Columbia, Illinois, and Nevada require reports on pawn customers daily. D.C. Stat. tit. 2, ch. 19, § 1911(d); Ill. Stat. ch. 205, Act 510, § 7; Nev. Stat. tit. 54, ch. 646.030. Florida also requires daily reporting and provides for instant reporting on pawn customers via computer

modems on the request of local law enforcement agencies, Fla. Stat. tit. 33, ch. 539.001(9).

Each and every pawn customer in states across the nation are criminal suspects merely because they are financially disadvantaged. Because they are excluded from mainstream credit markets, pawn customers are without exception treated as suspected thieves.

THE DISTRICT COURT AND TENTH CIRCUIT MISAPPLIED EXISTING CASELAW AND THE RULING IN THIS CASE IS IN CONFLICT WITH PREVIOUS TENTH CIRCUIT DECISIONS AS WELL AS SUPREME COURT RULINGS.

The Tenth Circuit relied upon ***Winters v. Board of County Commissioners,*** 4 F.3d 848 (10th Cir. 1993) and ***S&S Pawn Shop, Inc. v. City of Del City,*** 947 F.2d 432 (10th Cir. 1991) in stating customers have no expectation of privacy in pawn transactions because the pawn industry is a closely regulated industry. The District Court offered similar rationale, including in its relying caselaw ***California Bankers***

Assn. v. Shultz, 416 U.S. 21, 94 S.Ct. 1494, 39 L.Ed.2d 812 (1974) and *United States v. Miller,* 425 U.S. 435 (1976).

Both *Winters* and *S&S Pawn* were cases brought by pawnbrokers in which they challenged searches and seizures by law enforcement. The Tenth Circuit held that because the pawn industry is a closely regulated business, the searches — or inspections — provided for by statutes are constitutional; however, once law enforcement personnel have a suspicion stolen property is in a pawnshop they must obtain a warrant to seize the property. These findings are double-edged. Law enforcement may not perform seizures even in the closely-regulated pawn industry without warrant and once there is specific suspicion of criminal activity neither the original pawner nor the pawnshop are immune by any right of privacy or other reason to a seizure by warrant.

In *S&S Pawn* an Oklahoma pawn shop petitioned the federal court to determine the constitutionality of the

warrantless inspection of pawnshop books, records, and property allowed under the Oklahoma Pawnshop Act. Reviewing the decision from the Western District of Oklahoma, the Tenth Circuit Court of Appeals held that the statute providing for neutral administrative inspection is not on its face violative of the Fourth Amendment to the Constitution. ***Id.*** at 432. Plaintiffs assert that the reporting requirement is an unconstitutional application of a facially constitutional statute. Within its decision the Court addressed S&S Pawn's contention that the statute is over broad because it allows officers to inspect documents not connected to property reported as stolen.

> The [Oklahoma Pawn Shop] Act requires pawnbrokers to record and make available to law enforcement officials information such as the serial number of the item, the date of the transaction, and identification information on the seller. *We believe all this information pawnbrokers are required to record is potentially relevant to an investigation of stolen property by law enforcement officials.* We therefore cannot agree that officials are

> authorized to inspect records unconnected to stolen property.
> ***S&S Pawn*** at 438. Citations omitted, emphasis added.

The fact that the information contained in the pawn tickets is "potentially relevant" to criminal investigations is not sufficient justification for across the board reporting of all of a pawn shop customers' records. The same could be said for all bank customer's records, yet the law does not allow unregulated access to or regular reporting on every customer's account on every transaction to determine whether their address has changed or whether all the money was properly reported to the Internal Revenue Service or whether it is the product of some illegal scheme or whether it comes from the sale of contraband or drugs. There is no rational reason why disadvantaged pawn customers should not be afforded the same right to financial privacy as are customers of other types of institutions. However, the important distinction in this passage is the reference to record keeping as

opposed to reporting. The Court then adds, in footnote, a specifically relevant ruling to the instant cause.

> Appellant further contends that section 1508 violates the privacy rights of his customers by authorizing an inspection of customer records and by not limiting the search to property in the pawnshop.
>
> In general, a litigant must assert his own legal interest and cannot rest his claim to relief on the rights of third parties. One of the requirements for third party standing, however, is a genuine obstacle that prevents the third party from asserting his or her rights. Appellant does not contend that his customers are prevented from asserting their alleged deprivation of privacy of which he complains.

Id. at 438. Citations omitted.

Clearly the Court declined to address the privacy rights of the pawn customers until and if such time as the customers asserted those rights themselves such as in the instant cause. Therefore a ruling that, pursuant to *S&S* and *Winters*, the Tulsa ordinance is constitutional is clearly not supported by and contrary to the findings in those cases.

California Bankers is a lengthy case regarding the Bank Secrecy Act of 1970 in which the reporting requirements were challenged. This Court held that the reporting requirements on transactions defined within a specific range and set of potentially suspicious parameters are not unconstitutional and that banking customers have no expectation of privacy in their transactions, as they voluntarily convey the information to a third party. Aside from the obvious differences in types of financial institutions, there is a key distinction between the instant cause and ***California Bankers***. In the discussion on the Bank Secrecy Act this Court noted the difference:

> At the same time, it was recognized by Congress that such required records would "not be made automatically available for law enforcement purposes [but could] only be obtained through existing legal process." H.R. Rep. No. 91-975, p. 10 (1970); see S. Rep No. 91-1139, p. 5 (1970).
> *Id.* at 27.

In *Miller* law enforcement - the Alcohol, Tobacco, and Firearms Bureau - had specific suspicion and probable cause and obtained (arguably defective) subpoenas to obtain financial records of one individual. *Miller* at 437-439. However, the Tulsa Police Department and law enforcement agencies in states around the country are seizing personal vitae on pawn customers without suspicion, probable cause, or subpoena. Any process and any law allowing the unabridged confiscation of personal financial information without cause or notice has a "fatal constitutional defect." *Miller* at 448 n. 2.

In *Miller* the Supreme Court categorizes financial record keeping requirements as "merely an attempt to facilitate the use of a proper and long-standing law enforcement technique by insuring that records are available when they are needed." *Id.* at 444. The Oklahoma legislature obviously recognized this distinction by the

wording "make available," Okla. Stat. tit. 59, § 1515(C). However, that distinction has been lost in the Tulsa ordinance and the statutes of many other states, Tulsa, OK., Code Ch. 11 § 1104(C). A footnote to that statement in ***Miller*** further defines the distinction between recording and reporting:

> We are not confronted with a situation in which the Government, through "unreviewed executive discretion," has made a wide-ranging inquiry that unnecessarily "touch[es] upon intimate areas of an individual's personal affairs." *California Banker Assn. v. Shultz*, 416 U.S., at 78-79 (POWELL, J., concurring). Here the Government has exercised its powers through the narrowly directed subpoenas duces tecum subject to the legal restraints attendant to such process.
> ***United States v. Miller*** at 444-445.

The wholesale delivery of personal information on *every* pawn customer to the police department is not a "narrowly directed" legal inquiry but can certainly be characterized as a "wide-ranging inquiry."

Conclusion

This Court has held that people can have no expectation of privacy in the phone numbers dialed from their homes in ***Smith v. Maryland,*** 442 U.S. 735, 99 S.Ct. 2577, 61 L.Ed.2d 220. This Court *has not* held that law enforcement can then routinely seize lists of phone numbers dialed from every home in Oklahoma City. The distinction is crucial and the leap from one to the other monumental. However, the District Court and the Tenth Circuit have made such a leap in the instant cause. It is clear that this Court has declined to hold that the mere absence of expectation of privacy is sufficient to justify warrantless, wide-ranging seizure. The decisions of the District Court and the Tenth Circuit in this case are contrary to the Constitution of the United States and holdings of this Court. In a country where the privacy rights of citizens are eroding before our very eyes, a line must drawn. To allow such a holding to stand

blasphemes the dream of freedom our constitutional fathers made true for us.

If the statistics in Oklahoma hold true for the nation, a conservative estimate would show that one-third of the citizens of the United States — the poor and disadvantaged — are criminal suspects routinely tracked by law enforcement through the gathering of pawn customer personal vitae. Wholesale reporting of personal financial information on all pawn customers is a critical privacy issue which this Court must brand as repugnant and unconstitutional.

Respectfully submitted,

ORIGINAL SIGNED BY
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CERTIFICATE OF MAILING

I hereby certify that on the 30th day of March, 1998, a true and correct copy of the above and foregoing Petition for Writ of Certiorari was deposited in the U.S. Mail with postage prepaid thereon and addressed to:

Phil Lombardi
Clerk of the Court
U.S. District Court for the Northern District
4411 U.S. Courthouse
333 W. 4th St.
Tulsa, OK 74103

Larry V. Simmons
Manager, Litigation Division
200 Civic Center, Room 316
Tulsa, OK 74103

ORIGINAL SIGNED BY
LAURENCE K. DONAHOE

Laurence K. Donahoe

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

JOHN BAYLISS, JR.,	)	ENTERED ON
KAREN QUARLES,	)	DOCKET SEP 17 1996
	)	
vs.	)	No. 96-C-199-K
	)	
THE CITY OF TULSA,	)	FILED
et al.,	)	SEP 16 1996
	)	Phil Lombardi, Clerk
Defendants.	)	U.S. District Court

ORDER

Now before the Court is the motion of the defendants to dismiss. Plaintiffs, pawnshop customers, bring this purported class action to challenge the Oklahoma Pawnbroker act, 59 O.S. §1501 et seq. ("the Act"). The Act establishes a comprehensive scheme to regulate licensing of pawnbrokers, monitor pawn transactions, and control usury rates charged by pawnshops. One provision of the Act requires pawnbrokers to record certain information as to each pawn transactions, including name, address, and physical description of the customer, and to make such information available to law enforcement. See 59 O.S. §1515(C).

Dismissal is inappropriate under Rule 12(b)(6) F.R.Cv.P. unless the plaintiffs can prove no set of facts in support of their claims to entitle them to relief. The court must accept as true all the factual allegations in the complaint, construe them in a light most favorable to the plaintiffs, and resolve all reasonable inferences in plaintiffs' favor. Seamons v. Snow, 84 F.3d 1226, 1231-32 (10th Cir.1996).

The Act has twice before withstood constitutional challenges, brought by the same plaintiff's attorney as in the instant case. See S & S Pawn Shop, Inc. v. City of Del City, 947 F.2d 432 (10th Cir.1991); Winters v. Bd. Of County Comm., 4 F.3d 848 (10th Cir.1993), cert. denied, 114 S.Ct. 1539 (1994). The present

lawsuit is not brought by pawn brokers, but by two pawn customers, who allege a violation of the Fourth Amendment. Without using these precise terms, plaintiffs construe 59 O.S. §1515(C), which states pawnbrokers shall "make available" their reports to law enforcement as a passive requirement, while Tulsa Ordinance Ch. 11 §1104(C), which states pawnbrokers "shall cause to be delivered" the reports to law enforcement is construed as an active requirement and somehow more intrusive. Plaintiffs cite 59 O.D. §1514, which prohibits the passage of municipal ordinances more restrictive than the Act itself.

In response, defendants rely on the principle "when a person communicates information to a third party even on the understanding that the communication is confidential, he cannot object if the third party conveys that information or records thereof to law enforcement authorities." Securities and Exchange Comm'n v. O'Brien, Inc., 467 U.S. 735, 743 (1984). See also Smith v. Maryland, 442 U.S. 735, 742-43 (1979) (no legitimate expectation of privacy regarding the numbers one dials on a telephone); United States v. Miller, 425 U.S. 435, 441-43 (1975) (depositor has no expectation of privacy and thus no "protectable Fourth Amendment interest" in financial records retained by bank).

Upon review, the Court agrees these cases are dispositive. Plaintiffs' "passive/active" distinction is, in the Court's view, not supported by the cited language. The act requires pawnbrokers to "make available" the reports within three days of the pawn transaction. To make an item available within a strict time limit strongly suggest delivery of the item. Even if the plaintiffs' distinction is viable, it does not distinguish the Supreme Court precedent quoted above. A requirement of physical delivery is an added burden on pawnshop owners, not pawn shop customers. The Tulsa municipal ordinance does not create a Fourth Amendment violation as to pawn shop customers where none previously existed. The reports in question are the pawnbrokers' own business records, which the pawnbrokers are required by state law to make available to law enforcement. Pawn customers have no legitimate expectation of privacy in pawnbrokers' business records.

Plaintiffs also apparently attempt to assert some sort of Equal Protection claim, based upon the fact that pawn shop customers tend to be indigent. The complaint states at ¶3: "Typically the pawn loan customer is a person for whom other types of loans are not available and is often economically disadvantaged and must rely solely on the secured pawn transaction for their ability to borrow money." The Supreme Court has declined to treat the poor as a suspect class. See San Antonio Indep. School Dist. v. Rodriguez, 411 U.S. 1 (1973). Therefore, the Act must bear only a rational relationship to a legitimate state interest to withstand equal protection review. See Shifrin v. Fields, 39 F.3d 1112, 1114 (10th Cir.1994). This Court finds the Act bears a rational relationship to the legitimate state interest of law enforcement, given the frequency with which stolen property is pawned.

It is the Order of the Court that the motion of the defendants to dismiss (#9) is hereby GRANTED.

ORDERED this 16 day of September, 1996.

/s/ Terry C. Kern
TERRY C. KERN
UNITED STATES DISTRICT JUDGE

UNITED STATES COURT OF APPEALS
TENTH CIRCUIT

JOHN BAYLISS; KAREN RAE QUARLES, and all pawn customers similarly situated,

Plaintiffs-Appellants,

v.

CITY OF TULSA, an incorporated municipality separately and as Susan Savage, Tulsa Mayor; TULSA CITY COUNCIL, a municipal Corporation within Tulsa County separately and as B.S. Robert, Darla Hall, Mike Patrick, Gary Watts, Robert Nelson, James Hogue, Sr., John Benjamin, Vickie Cleveland, and Dewey Bartlett, Jr., all Tulsa City Councilmembers; B.S. ROBERT; DARLA HALL; MIKE PATRICK; GARY WATTS; ROBERT NELSON; JAMES HOGUE, SR.; JOHN BENJAMIN; VICKIE CLEVELAND; DEWEY BARTLETT, JR.; TULSA POLICE DEPARTMENT, sued as: Ron Cunningham a police officer

F I L E D
United States Court of Appeals
Tenth Circuit
AUG 26 1997
PATRICK FISHER
Clerk

No. 96-5241
(D.Ct.No. 96-CV-199-K)
(N.D. Okla.)

for the City of Tulsa, Oklahoma and Rob Palmer, the duly appointed Chief of Police of the City of Tulsa, Oklahoma; RON CUNNINGHAM, an individual; RON PALMER, an individual; OKLAHOMA PROPERTY RECOVERY ASSOCIATION, an unincorporated organization, separately and as Ron Cunningham, president;

Defendants-Appellees.

ORDER AND JUDGMENT*

Before TACHA, BALDOCK, and LUCERO, Circuit Judges.

After examining the briefs and the appellate record, this three-judge panel has determined unanimously that oral argument would not be of material assistance in the determination of this appeal. See Fed.R.App.P.34(a); 10th Cir.R.34.1.9. The cause is therefore ordered submitted without oral argument.

This appeal is from an order of the district court granting the motion of the defendant City of Tulsa to dismiss this action under Rule 12(b)(6) Fed.R.Civ.P. We review such a dismissal de novo and, accept as true all of the factual allegations in the complaint, construe them in the light most favorable to the plaintiffs, and resolve all reasonable inferences in plaintiff's favor. Plaintiffs are pawnshop customers who bring this purported class

*This order and judgment is not binding precedent, except under the doctrines of law of the case, res judicata, and collateral estoppel. This court generally disfavors the citation of orders and judgments; nevertheless, an order and judgment may be cited under the terms and conditions of 10th Cir. R. 36.3.

action to challenge the constitutionality of the Oklahoma Pawn Broker Act, 59 O.S. § 1501 et seq. ("the Act"). Plaintiffs in this action challenge the constitutionality of the application of the Act as it is applied by the Tulsa Municipal Code Ordinance Ch. 11 § 1104(C) which states that pawn brokers "shall cause to be delivered" their reports to law enforcement. Arguing that the Act prohibits the passage of municipal ordinances more restrictive than the Act itself, plaintiffs argue that the reporting requirements of the Tulsa Municipal Code result in an unconstitutional application of the Act. We disagree and affirm.

In our view, the issues raised by the pawnshop customers in this case are controlled by S & S Pawn Shop, Inc. v. City of Del City, 947 F.2d 432 (10th Cir.1991) and Winters v. Bd. Of County Comm., 4 F.3d 848 (10th Cir.1993), cert. denied, 114 S.Ct. 1539 (1994). Plaintiffs attempt to distinguish those cases by arguing that this case is brought by two pawnshop customers instead of by pawn brokers. The plaintiffs allege a violation of the Fourth Amendment and argue that the Tulsa Ordinance which states that pawn brokers "shall cause to be delivered" pawnshop reports to law enforcement somehow distinguishes this case from the cases previously decided by this circuit. Plaintiff cannot evade the well established principal that they cannot have a legitimate expectation of privacy in information that was voluntarily given to third parties. Securities and Exchange Comm'n v. O'Brien, Inc., 467 U.S. 735, 743 (1984). The pawnshop business is a highly regulated business in almost all states. Oklahoma is no exception. Anyone who enters into a transaction with a pawnshop enters into a public transaction that is the subject of a full array of state and local laws regarding law enforcement's entitlement and access to information regarding these transactions. Pawnshop customers simply have no subjective expectation of privacy in these public transactions.

The Oklahoma Pawn Broker act and the Tulsa Ordinance clearly are reasonable and rationally related to a legitimate governmental interest. Winters v. Bd. Of County Comm., 4 F.3d 848 (10th Cir.1993). We hold that there is no distinction between this action and those previously decided by this circuit. We therefore AFFIRM

the order of the district court for substantially the reasons given by the district court.

ENTERED FOR THE COURT,

Deanell Reece Tacha
Circuit Judge

Okla. Stat. tit. 59, § 1515(C)

C. Any pawnbroker shall make available a copy or report within three (3) days of any pawn transaction to the local law enforcement agency of the municipality or other political subdivision in which the pawnshop is located. The copy or report shall include:

1. The name and address of the pawnshop;

2. The name, address, race, sex, weight, height, date of birth and either identification number of the person making the pawn transaction with the pawnshop as verified by either a state-issued identification card, driver's license or federal government-issued identification card or by readable fingerprint of right or left index finger on the back of the pawn or buy transaction copy to be retained for the pawnbroker's record;

3. The pawn transaction number;

4. The date and time of the transaction;

5. The manufacturer of the item;

6. A description of the item; and

7. The serial number and model number where available and any other identifying markings.

Tulsa, OK., Code Ch. 11 § 1104(C)

C. PAWN TRANSACTIONS. Every pawnbroker shall cause to be delivered to the Chief of Police or his designee, either by

delivery or deposit in the United States Mail, a copy or report of any pawn transaction and such copy or report shall be in the possession of the appropriate police personnel within three (3) days of the transaction. The copy or report shall include:

1. The name and address of the pawnshop;

2. The name, address, weight, height, date of birth and identification number of the person making the pawn transaction as verified by a state or federal identification card or driver's license provided that all such forms of identification shall include the photo of the person so identified;

3. The pawn transaction number;

4. The date of the transaction;

5. The manufacturer of the item;

6. A description of the item; and

7. The serial number and model number of the item, where available, and any other identifying markings.

Colo. Stat. tit. 12, art. 56, § 12-56-103

§ 12-56-103. Required acts of pawnbrokers

(1) A pawnbroker shall keep a numerical register in which he shall record the following information: The name, address, and date of birth of the customer, and his driver's license number or other identification number from any other form of identification which is allowed for the sale of valuable articles pursuant to section 18-16-103, C.R.S., or for the sale of secondhand property pursuant to section 18-13-114, C.R.S.; the date, time, and place of the contract for purchase or purchase transaction; and an accurate and

detailed account and description of each item of tangible personal property, including, but not limited to, any trademark, identification number, serial number, model number, brand name, or other identifying marks on such property. The pawnbroker shall also obtain a written declaration of the customer's ownership which shall state that the tangible personal property is totally owned by the customer, or shall have attached to such declaration a power of sale from the partial owner to the customer, how long the customer has owned the property, whether the customer or someone else found the property, and, if the property was found, the details of the finding.

(2) The customer shall sign his name in such register and on the declaration of ownership and receive a copy of the contract for purchase or a receipt of the purchase transaction.

(3) Such register shall be made available to any local law enforcement agency for inspection at any reasonable time.

(4) The pawnbroker shall keep each register for at least three years after the date of the last transaction entered in the register.

(5) A pawnbroker shall hold all contracted goods within his jurisdiction for a period of ten days following the maturity date of the contract for purchase, during which time such goods shall be held separate and apart from any other tangible personal property and shall not be changed in form or altered in any way.

(6) A pawnbroker shall hold all property purchased by him through a purchase transaction for thirty days following the date of purchase, during which time such property shall be held separate and apart from any other tangible personal property and shall not be changed in form or altered in any way.

(7) Every pawnbroker shall provide the local law enforcement agency, on a weekly basis, with two records, on a form

to be provided or approved by the local law enforcement agency, of all tangible personal property accepted during the preceding week and one copy of the customer's declaration of ownership. The form shall contain the same information required to be recorded in the pawnbroker's register pursuant to subsection (1) of this section. The local law enforcement agency shall designate the day of the week on which the records and declarations shall be submitted.

D.C. Stat. tit. 2, ch. 19, § 2-1911

s 2-1911 Book containing loan transactions required; inspection of books; police to be admitted to premises; daily transcript.

(a) Every pawnbroker shall keep a book in which shall be fairly written, at the time of each loan, an accurate account and description of the goods, article, or thing pawned or pledged, the amount of money loaned thereon, the time of pledging the same, the rate of interest to be paid on such loan, and the name and residence of the person pawning or pledging the said goods, article, or thing, together with a particular description of such person, including complexion, color of eyes and hair, and his or her height and general appearances.

(b) The said book shall at all reasonable times be open to the inspection of the Mayor. It shall be the duty of every pawnbroker, and of every person in his employ, to admit to his premises during business hours any member of the Metropolitan Police force of the District of Columbia as aforesaid to examine any pledge or pawnbook or other record on the premises, as well as the articles pledged, purchased, or received, and to search for and take possession of any article known by him to be missing or known or believed by him to have been stolen, without the formality of the writ of search warrant or any other process, which search or seizure is hereby authorized.

(c) Except as to any judicial or other official of the District, having a right thereto in his official capacity, it shall be unlawful for any officer or employee of the District to divulge or make known in any manner the contents of such book.

(d) Every pawnbroker shall, every day, except Sunday, before the hour of 11:00 a.m., deliver to the Chief of Police, or his representative, on forms to be prescribed by the Mayor of the District of Columbia, a legible and correct transcript from the book or books provided for in subsection (a) of this section, showing an accurate and complete description of every article or thing received by him, in pawn or pledge, and giving all numbers, marks, monograms, trademarks, manufacturers' names, and other marks of identification appearing on the same, on the business day next preceding, together with the numbers of the pawn ticket issued therefor, the amount of the loan thereon, and the name, residence, and physical description of the person pawning or pledging the said goods, article or thing.

Fla. Stat. tit. 33, ch. 539.001(8)(9)

(8) Pawnbroker transaction form.--

(a) At the time the pawnbroker enters into any pawn or purchase transaction, the pawnbroker shall complete a pawnbroker transaction form for such transaction, including an indication of whether the transaction is a pawn or a purchase, and the pledgor or seller shall sign such completed form. The agency must approve the design and format of the pawnbroker transaction form, which must elicit the information required under this section. In completing the pawnbroker transaction form, the pawnbroker shall record the following information, which must be typed or written indelibly and legibly in English.

(b) A pawnbroker transaction form must include:

1. The name and address of the pawnshop.

2. A complete and accurate description of the pledged goods or purchased goods, including the following information, if applicable:

a. Brand name.

b. Model number.

c. Manufacturer's serial number.

d. Size.

e. Color, as apparent to the untrained eye.

f. Precious metal type, weight, and content, if known.

g. Gemstone description, including the number of stones.

h. In the case of firearms, the type of action, caliber or gauge, number of barrels, barrel length, and finish.

i. Any other unique identifying marks, numbers, names, or letters.

Notwithstanding sub-subparagraphs a.-i., in the case of multiple items of a similar nature delivered together in one transaction which do not bear serial or model numbers and which do not include precious metal or gemstones, such as musical or video recordings, books, and hand tools, the description of the items is adequate if it contains the quantity of items and a description of the type of items delivered.

3. The name, address, date of birth, physical description, and right thumbprint of the pledgor or seller.

4. The date and time of the transaction.

5. The type of identification accepted from the pledgor or seller, including the issuing agency and the identification number.

6. In the case of a pawn:

a. The amount of money advanced, which must be designated as the amount financed;

b. The maturity date of the pawn, which must be 30 days after the date of the pawn;

c. The total pawn service charge payable on the maturity date, which must be designated as the finance charge;

d. The amount financed plus the finance charge that must be paid to redeem the pledged goods on the maturity date, which must be designated as the total of payments;

e. The annual percentage rate, computed according to the regulations adopted by the Federal Reserve Board under the federal Truth in Lending Act; and

f. A statement that:

(I) Any personal property pledged to a pawnbroker within this state which is not redeemed within 30 days following the maturity date of the pawn, if the 30th day is not a business day, then the following

business day, is automatically forfeited to the pawnbroker, and absolute right, title, and interest in and to the property vests in and is deemed conveyed to the pawnbroker by operation of law, and no further notice is necessary;

(II) The pledgor is not obligated to redeem the pledged goods; and

(III) If the pawnbroker transaction form is lost, destroyed, or stolen, the pledgor must immediately advise the issuing pawnbroker in writing by certified or registered mail, return receipt requested, or in person evidenced by a signed receipt.

(IV) A pawn may be extended upon mutual agreement of the parties.

7. In the case of a purchase, the amount of money paid for the goods or the monetary value assigned to the goods in connection with the transaction.

8. A statement that the pledgor or seller of the item represents and warrants that it is not stolen, that it has no liens or encumbrances against it, and that the pledgor or seller has the right to enter into the transaction.

9. Immediately above the signature of the pledgor or seller, a statement that the pledgor or seller of the item declares: "Under penalty of perjury, I have read the foregoing document, and the facts stated in it are true."

(c) A pawnbroker transaction form must provide a space for the imprint of the right thumbprint of the pledgor or seller and a blank line for the signature of the pledgor or seller.

(d) At the time of the pawn or purchase transaction, the pawnbroker shall deliver to the pledgor or seller an exact copy of the completed pawnbroker transaction form.

(9) Recordkeeping; reporting; hold period.--

(a) A pawnbroker must maintain a copy of each completed pawnbroker transaction form on the pawnshop premises for at least 1 year after the date of the transaction. On or before the end of each business day, the pawnbroker must deliver to the appropriate law enforcement official the original pawnbroker transaction forms for each of the transactions occurring during the previous business day, unless other arrangements have been agreed upon between the pawnbroker and the appropriate law enforcement official. If the original transaction form is lost or destroyed by the appropriate law enforcement official, a copy may be used by the pawnbroker as evidence in court. When an electronic image of a pledgor or seller identification is accepted for a transaction, the pawnbroker must maintain the electronic image in order to meet the same recordkeeping requirements as for the original transaction form. If a criminal investigation occurs, the pawnbroker shall, upon request, provide a clear and legible copy of the image to the appropriate law enforcement official.

(b) If the appropriate law enforcement agency supplies the appropriate software and the pawnbroker presently has the computer ability, pawn transactions shall be electronically transferred. If a pawnbroker does not presently have the computer ability, the appropriate law enforcement agency may provide the pawnbroker with a computer and all necessary equipment for the purpose of electronically transferring pawn transactions. The appropriate law enforcement agency shall retain ownership of the computer, unless otherwise agreed upon. The pawnbroker shall maintain the computer in good working order, ordinary wear and tear excepted. In the event the pawnbroker transfers pawn transactions electronically, the pawnbroker is not required to also deliver to the appropriate law enforcement official, the original or

copies of the pawnbroker transaction forms. The appropriate law enforcement official may, for the purposes of a criminal investigation, request that the pawnbroker produce an original of a transaction form that has been electronically transferred. The pawnbroker shall deliver this form to the appropriate law enforcement official within 24 hours of the request.

(c) All goods delivered to a pawnbroker in a pawn or purchase transaction must be securely stored and maintained in an unaltered condition within the jurisdiction of the appropriate law enforcement official for a period of 30 calendar days after the transaction. Those goods delivered to a pawnbroker in a purchase transaction may not be sold or otherwise disposed of before the expiration of such period. The pawnbroker shall make all pledged and purchased goods and all records relating to such goods available for inspection by the appropriate law enforcement official during normal business hours throughout such period. The pawnbroker must store and maintain pledged goods for the period prescribed in subsection (10) unless the pledged goods are redeemed earlier; provided, however, that within the first 30 days after the original pawn, the pledged goods may be redeemed only by the pledgor or the pledgor's attorney in fact.

Ill. Stat. ch. 205, Act 510, § 7

510/7. Daily report

§ 7. It shall be the duty of every pawnbroker to make out and deliver to the sheriff of the county in which such pawnbroker does business, on each day before the hours of 12 o'clock noon, a legible and exact copy from the standard record book, as required in Section 5 of this act, that lists all personal property and other valuable things received on deposit or purchased during the preceding day, together with the exact time when received or purchased, and a description of the person or person by whom left in pledge, or from whom the same were purchased; provided, that in cities or towns having twenty-five thousand or more inhabitants,

a copy of the such report shall at the same time also be delivered to the superintendent of police or the chief police officer of such city or town.

Mass. Stat. tit. 20, ch. 140, § 79

§ 79. Record book; information furnished to authorities

Every pawnbroker shall keep a book in which, at the time of making a loan, shall be legibly written in the English language an account and description, including all distinguishing marks and numbers, of the articles pawned, the amount of money loaned thereon, the time of pawning them, the rate of interest to be paid on such loan, and the name and residence of the person pawning such articles, and shall furnish a correct record of such transactions, containing all such information, once a week, or oftener if required, to the licensing authorities or to any person designated by them. Every pawnbroker shall also photograph any person pawning articles and keep the photographs with said books as part of his records.

Nev. Stat. tit. 54, ch. 646.030

646.030. Reports of transactions and stolen property to sheriffs and chiefs of police.

1. Every pawnbroker doing business in any unincorporated town shall, before 12 m. of each day, furnish in duplicate to the sheriff of the county a full, true and correct transcript of the record of all transactions had on the preceding day.

2. Every pawnbroker doing business in any incorporated city shall, before 12 m. of each day, furnish in duplicate to the chief of police thereof, a full, true and correct transcript of the record of all transactions had on the preceding day.

3. Every pawnbroker doing business in an unincorporated town or in an incorporated city having good cause to believe that any property in his possession has been previously lost or stolen shall forthwith report such fact to the sheriff or chief of police,

respectively, together with the name of the owner if known, and the date when, and the name of the person from whom, the same was received by him.

N.M. Stat. ch. 56, Art. 12, § 9

56-12-9 Pawnbroker reports; records; delivery; violations.

A. Every pawnbroker shall each day accurately complete a report of all used property of every kind received or purchased in a pawn transaction during the preceding business day on a form approved by the local law enforcement agency. Either a driver's license or other photo identification card shall be required of each person entering into a pawn transaction with a pawnbroker. Each item received shall be listed on a separate report form. Said report shall include the following:

(1) name of item;

(2) description of the item including make and model number, if any;

(3) serial number and other identifying marks, if any;

(4) date, time and type of pawn transaction;

(5) name and address of person offering the item;

(6) description of the person offering the item including sex, complexion, hair color, approximate height and weight, and date of birth; and

(7) type of identification used by person offering item and identifying number of said identification. If the person presents a driver's license, the report shall also indicate the state of issuance.

B. All reports required by this section shall be completed accurately and be made available by 12 o'clock noon of the day following the day of the pawn transaction and shall be delivered or mailed to the local law enforcement agency within three days of the pawn transaction.

C. Property purchased directly from another permitholder regulated by the Pawnbrokers Act [56-12-1 to 56-12-16 NMSA 1978] who has already reported the item pursuant to this section is exempt from the requirements of this section.

D. Persistent or frequent erroneous or incomplete entries in or delays in the submitting of the above required reports shall constitute a violation of this section and are subject to the general penalty provisions of the Pawnbrokers Act.

E. The reports and records of the permitholder required pursuant to this section, as well as every item received in pawn, shall be available for inspection by the local government authority, the attorney general, the local law enforcement agency or any sworn member of that law enforcement agency at all reasonable times.

F. Each item pledged to or purchased by the permitholder for which a report is required shall have attached to it a tag with an alphabetic or numerical identification system matching that item with its corresponding report and record.

Ore. Stat. tit. 54, ch. 726, § 285

726.285. Records of transactions by pawnbroker; delivery of copies to local police agency.

(1) In addition to the register required under ORS 726.280, a pawnbroker shall record, for each transaction, the date, the name and address of the pledgor, the type and number of any proof of

identification presented by the pledgor, a physical description of the pledgor and an identifying description of the article pledged.

(2) The pawnbroker shall deliver each record, or a copy thereof, made under this section, within three days after the date of the transaction, to the local police agency that has jurisdiction over the location at which the pawnbroker has a place of business.

Tenn. Stat. tit. 45, ch. 6, § 209

45-6-209 Record of transactions required -- Inspection.

(a) Every pawnbroker shall keep a consecutively numbered record of each and every pawn transaction which shall correspond in all essential particulars to the detachable pawn ticket attached. The consecutive numbering process for pawnbroker transactions dealing with over-the-counter purchases, described in s 45-6-204(a)(7) shall be numbered and identified independently from a buy-sell agreement and/or a loan of money transaction.

(b) The pawnbroker shall, at the time of making the pawn transaction and/or buy-sell transaction, enter upon the pawnshop copy of the records as well as on the pawn ticket, and/or buy-sell ticket, the following information, which shall be typed or written in ink and in the English language:

(1) A clear and accurate description of the property, including serial numbers if pledged articles shall bear such;

(2) The date of the pawn transaction;

(3) The amount of cash loan advanced on the pawn transaction;

(4) The exact value of property as stated by pledgor who pledges same;

(5) The maturity date of the pawn transaction, which date shall not be less than thirty (30) days after the date of the pawn transaction; and

(6) The name, race, sex, height, weight, date of birth, residence address and numbers from the items used as identification. Acceptable items of identification are one (1) of the following documents:

(A) A state-issued driver license;

(B) A state-issued identification card;

(C) A passport;

(D) A valid military identification;

(E) A nonresident alien border crossing card;

(F) A resident alien border crossing card; or

(G) A United States immigration and naturalization service identification.

(c) The pledgor shall sign the stub providing the pledgor's residence address and shall receive the detached pawn ticket; the stub shall also be signed by the pawnbroker.

(d) These records shall be delivered to the appropriate law enforcement agency, by mail or in person, within forty-eight (48) hours following the day of such transactions. Delivery by mail shall be deemed made when deposited in the United States mail, postage prepaid. Further, these records shall be made available for inspection each business day, except Sunday, by the sheriff of the county and the chief of police of the municipality in which the pawnshop is located.

(e) These records shall be a correct copy of the entries made of the pawn transactions and/or buy-sell transactions and shall be carefully preserved without alteration and shall be available during regular business hours for inspection by the appropriate law enforcement officers as herein provided.

(f) In any county having a population of more than eight hundred thousand (800,000) according to the 1990 federal census or any subsequent federal census each licensed pawnbroker shall retain these records for a period of one (1) year. After such time these records shall be delivered to the appropriate law enforcement agency in the county.

PAWNBROKING IN AMERICA
THE ECONOMICS OF A FORGOTTEN CREDIT MARKET

John P. Caskey

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RWP 89-17

Research Division
Federal Reserve Bank of Kansas City

John Caskey is an assistant professor in the Department of economics at Swarthmore College. This paper was completed while Professor Caskey was a visiting scholar at the Federal Reserve Bank of Kansas City. The author gratefully acknowledges the financial support of the Swarthmore College Research Fund for this project. Brian J. Zikmund collaborated extensively in the background research and expresses his gratitude to the Joel Dean Foundation for a student summer research stipend. Janet Ceglowshi provided helpful comments on an earlier version of this paper. Brian and I are both indebted to the people in state pawnshop oversight agencies and to the many pawnshop owners in the Philadelphia area and elsewhere who took the time to explain the business to us.

The view expressed herein are solely those of the authors and do not necessarily reflect the views of the Federal Reserve Bank of Kansas City or of the Federal Reserve System.

Pawnbroking in America
The Economics of a Forgotten Credit Market

Abstract

Drawing on data from state regulatory agencies and interviews with pawnbrokers, this paper examines the role of pawnbroking in U.S. credit markets. Among the findings presented are the following: Pawnshops serve as a source of credit to millions of low income Americans, providing average secured loans of about $50 with one and two month maturity periods. Most states regulate pawnshop interest rates, with ceiling APR interest rates varying across the states from 36 percent to 300 percent. Given this variation, pawnshops are highly unequally distributed across the U.S., with the vast majority in Southern and Central Mountain states which tend to have the most generous usury ceilings. Pawnshop default rates average about 20 percent. Pawnshop credit is somewhat cyclical; the average loan size increases when the economy is doing well.

Pawnbroking has largely died out in Britain over the past century, but it has grown in the U.S. and shifted from the older major urban areas to rural and Sunbelt cities. In addition, the 1980s have been a boom period for pawnbroking, with new shops opening in all parts of the country. This upturn may be due to an increase in the number of Americans excluded from mainstream credit markets because of low and unstable incomes and bank branch closings in low income neighborhoods.

Pawnbroking in America
The Economics of a Forgotten Credit Market

November 1989

John P. Caskey

In his 1930 study of consumer financial institutions, Clark Evans (1930, p. 40), commented regarding pawnshops,

> The actual facts, however, are almost completely unknown. No national statistics of pawnbrokers have ever been compiled, nor, as far as the author has been able to find out, have any been published even for a single city. Neither have any academic studies been made of the business in the United States.

Sixty years later, it is time to remedy this oversight.

Interestingly, monetary economists have produced hundreds of theoretical and empirical studies of banks while completely ignoring pawnshops, popularly known as banks for the little man. This omission is unfortunate because pawnshops are a source of credit to millions of low-income Americans who are-excluded from more mainstream financial markets. Moreover, pawnbroking has grown in importance over the past decade, probably reflecting an increase in the percentage of the population without access to bank or finance company credit.[1]

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[1]Pawnshops in the U.S. are not only important because of their contemporary role as a key credit source for lower income Americans, but also for their historical role in the discovery of America. As Samuel Levine (1911, p. 31) points out, Isabella of Castile pawned her jewels to finance Christopher Columbus' first voyage to America. Levine notes this thought led one 19th century writer to comment that if Americans had duly reflected on this incident, they certainly would have placed the three balls in their national flag along with the stars and stripes.

This paper provides an overview of the economics of pawnbroking in America. Among the questions addressed are: How important is pawnbroking in consumer credit markets? Who uses pawnshops as a source of credit and why? How are pawnshops regulated and what are the characteristics of a typical pawnshop loan? Is the availability of pawnshop credit affected by the business cycle? Why are pawnshops so unevenly distributed across the nation? And, finally, why did pawnbroking die out in Britain but not in the U.S. and what explains the 1980s upturn in the pawnbroking industry?

Before beginning to answer these questions, the degree to which pawnshops have been overlooked by economists should be emphasized. There have been no studies of pawnbroking in North America using data from the past 50 years. Prior to that, the best studies were William Patterson's (1899a and 1899b) comparative study of American and European pawnshops, Samuel Levine's (1913) extensive description of the pawnbroking business, and Rolf Nugent's (1939) effort to quantify the importance of pawnbroking in consumer credit markets.[2] In Britain, pawnbroking has received more attention. Kenneth Hudson (1982) and Melanie Tebbutt (1983) have written fascinating accounts of the historical development of British pawnbroking, and A.L. Minkes (1953) studied the decline of pawnbroking in Britain between the beginning of the 20th century and the early 1950s. With pawnshops common in much of Latin America and Asia, some attention has been given to their role in developing countries. The World Bank's *World Development Report, 1989*, with its focus on financial liberalization, briefly discusses pawnshops as a source of credit in developing countries (pp. 114-115) but does not quantify their significance or explain their behavior in any detail. Bauman and Houtman (1988), however, provide a good description of the functioning of pawnshops in Sri Lanka.

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[2]Recently, Rotella (1989), drawing on Patterson's data, examined the links between 19th century business cycles and the lending behavior of a nonprofit Boston pawnshop.

I. The Importance of Pawnbroking in the U.S. Economy

In 1988 there were approximately 6,900 pawnshops in the United States, about one pawnshop for ever two commercial banks.[3] As indicated in Figure 1, even after adjusting for differences in population, pawnshops are unevenly distributed across the United States. Texas, with about 1,030 active pawnshops, has the most of any state but Oklahoma and Idaho, with 360 and 110 respectively, have the most pawnshops per capita, a little more than 1 for every 10,000 inhabitants. The Sunbelt and Central Mountain states tend to have the highest numbers of pawnshops per capita, while the New England and Great Lake states have the least.

There are no official estimates of the importance of pawnshops as a source of credit in the United States. The Board of Governors of the Federal Reserve System does not collect data on pawnshops and does not include an estimate of pawnshop credit in its statistics on total domestic credit. However, extrapolating from the data provided by a few state regulatory agencies, total pawnshop credit outstanding at the end of the 1988 would appear to be about $689 million, with pawnshops making about $1,723 million of loans over the year.[4] For comparison, outstanding consumer credit in 1987 (expressed in 1988 prices) totaled $728 billion, of which 371 billion was accounted for by commercial bank loans, $86 billion by credit unions, and $176 billion by finance companies.

By these measures, pawnshops appear to merit academic neglect; they are the source for only about one tenth of one percent of consumer credit in the United States. On the other hand, for many lower income Americans without access to more mainstream

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[3]This estimate was constructed by contacting state regulatory agencies and counting yellow page listings for states without pawnshop oversight agencies. The actual count was 6853. For the states for which both official and yellow page counts exist, the two numbers are very close.

[4]An appendix, available from the author, presents the methodology behind these estimates.

credit markets, pawnshops are an important source of credit. While these people are insignificant in terms of their financial weight, they are not insignificant as a percentage of the population. For example, evidence indicates that pawnshops made about 35 million loans in 1988. Even allowing for multiple loans to a core group of customers, pawnshops must serve several million Americans each year, and perhaps as much as 10 percent of the population. However, since the average loan was only about $50, pawnshop lending as a percentage of total consumer credit appears much less significant than it does as a percentage of the population served.

Evidence on who uses pawnshops and why is limited, but the majority of customers are clearly low income individuals without access to lower-cost mainstream credit markets.[5] Poor Americans are often excluded from bank or finance company credit because they do not own sufficient collateral to secure a minimum size loan and because they are judged too risky for unsecured credit. As Alan Andreasen (1975) found in his empirical study of low income consumers, they are much more likely than the middle class to have unstable incomes and employment patterns. This increases their need for credit, but also makes it more difficult for them to honor debt payment commitments reliably. In addition, many low income individuals do not maintain bank accounts, almost assuring they will be rejected in a credit check. The Federal Reserve Board's 1983 Survey of Consumer Finances, for example, found that 12 percent of all families did not have a checking or savings account.[6]

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[5]Thomas A. Durkin (1975) conducted what may be the only survey covering the characteristics of small borrowers. Although he studies finance company customers, who are undoubtedly better off than pawnshop customers, he found that 54 percent of those obtaining unsecured loans of less than $100 in seven Texas cities in the early 1970s were low-level blue-collar workers in service industries.

[6]See Canner and Maland (1987). Unfortunately, the Federal Reserve's Survey of Consumer Finance does not classify participants obtaining credit from pawnshops. They are simply identified as obtaining credit from a non-traditional source that includes individual to individual loans as well as pawnshops.

Of these families, 57 percent fell into the lowest quintile for family income and 59 percent are headed by individuals without a high school education.

Anecdotal evidence also supports the notion that the vast majority of pawnshop customers consist of low income individuals excluded from mainstream credit markets. For example, Cash America Investments, a publicly traded company that owns about 100 pawnshops located in Texas, Oklahoma, and Louisiana, reports glowingly in its 1988 Annual Report,

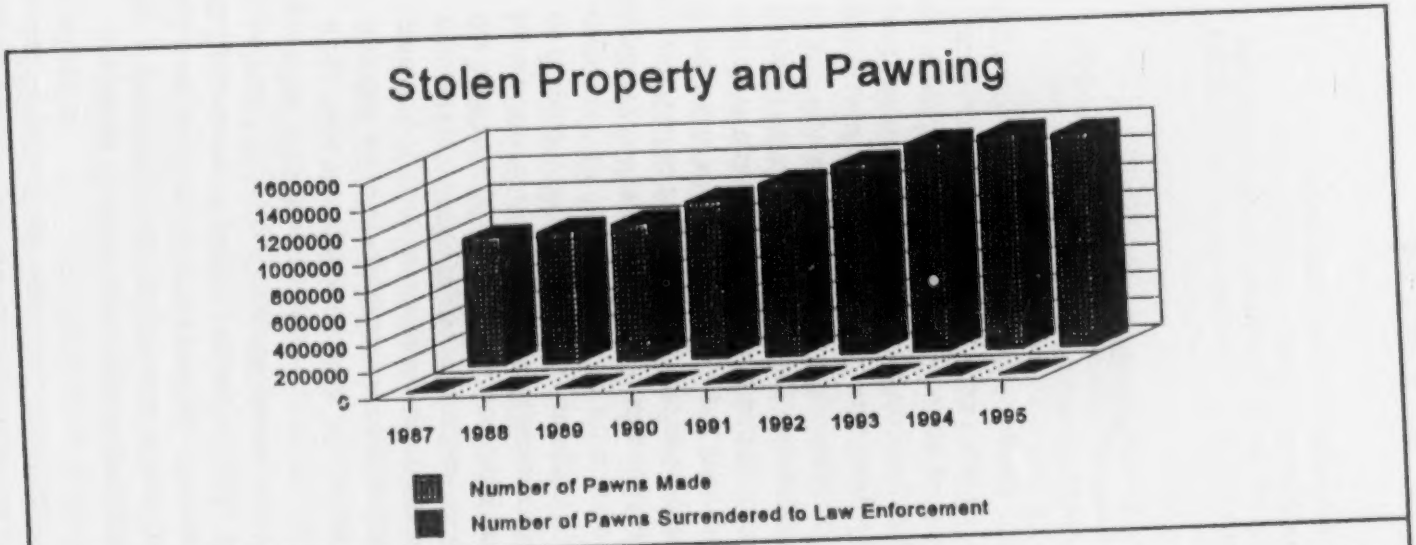
> It has been estimated that 20 to 30 percent of America's adult population chooses to deal with cash-only transactions which require neither bank accounts nor credit cards. These individuals are the backbone of America: hard working people who have a need for immediate cash, as everyone does on occasion. *These* are Cash American's customers. (P.5)

More directly, Jack Daugherty, the founder and C.E.O. of Cash America, remarked to a journalist (*New York Times*, 8/13/89),

> I could take my customers and put them on a bus and drive them down to a bank and the bank would laugh at them. That's why they're my customers.

In interviews, owners of Philadelphia area pawnshops explained that their customers come from all social classes, but a clear majority obviously belong to low income groups. Most middle and upper income customers who use pawnshops, use them for their discretion and convenience; cash loans are disbursed in a matter of minutes with very few questions asked.

.....(remaining omitted).....



	1987	1988	1989	1990	1991	1992	1993	1994	1995
Pawns Made	946,044	977,633	1,020,023	1,165,008	1,278,351	1,399,933	1,535,476	1,584,093	1,573,253
Pawns Surrendered to Law Enforcement	947	1034	802	973	1194	1010	1010	962	873
Percentage	0.00100	0.00106	0.000786	0.000835	0.000934	0.000721	0.000658	0.000607	0.000555
Percentage breakdown	1 in 999	1 in 945	1 in 1272	1 in 1197	1 in 1071	1 in 1386	1 in 1520	1 in 1646	1 in 1802

Information taken from the State of Oklahoma, Department of Consumer Credit Composite Pawnbroker Annual Reports for 1987 through 1995.

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

ANNABELLE WINTERS d/b/a SHARP'S PAWN SHOP,	)	
Plaintiff,	)	
vs.	)	Case No. 90-C-508-C
BOARD OF COUNTY COMMISSIONERS OF OSAGE COUNTY, OKLAHOMA, OSAGE COUNTY SHERIFF'S DEPARTMENT, GEORGE WAYMAN, individually and as Sheriff of Osage County, ALLEN LANDSDOWN, individually and as Deputy Sheriff,	)	
Defendants.	)	

AFFIDAVIT

Earl J. Clark, Senior Examiner for the Department of Consumer Credit, Tulsa Office, disposes and states:

1. Affiant is the Senior Examiner for the Department of Consumer Credit, in charge of the department's Tulsa Office, Tulsa County, Oklahoma.

2. The Oklahoma Department of Consumer Credit is the regulatory agency for all institutions covered under the Uniform Consumer Credit Code, the Oklahoma Pawn Shop Act, the Health Spa Act and the Rent-to-Own Act.

3. The Departments responsibilities include the protection of consumer regarding complaints filed by these consumers, and the examination of each supervised lender, pawnshop, and credit organization.

4. Following the enactment of Okla. Stat. tit. 59, Section 1515 I received a complaint from a consumer who was stopped by the Tulsa Police Department on a routine traffic violation. I have attached a copy of the letter of complaint which the department received to this Affidavit as Exhibit "A". The facts set forth in Exhibit "A" constitute the complaint which was lodged, in this instance, by the consumer.

5. The consumer voiced his concern to the affiant that his private loan information, number of loans, amount, name, address, and social security number was being gathered for and/or given to the Tulsa police department by the pawnbroker. He was angry that such information would be transmitted over the police radio to the officer in the car on a routine traffic stop. The consumer requested the Departments help in protecting his rights.

Further affiant saith not.

/s/ Earl J. Clark
Earl J. Clark

ACKNOWLEDGMENT

STATE OF OKLAHOMA)
) ss
COUNTY OF OKLAHOMA)

The foregoing instrument by Earl J. Clark was acknowledged before me, a Notary Public, on the 22 day of January, 1991.

3-11-92
My commission expires:

/s/ Janice A. Hendricke
Notary Public

RECEIVED
Sep 26 1990
Tulsa Office

9-26-90
9:44 am

On or about 8-13-90 at approximately 1810 hrs, I was stopped by Tulsa City police for an expired safety sticker on N. Mingo Rd. North of the I-44 overpass.

I was put into the front seat of the cruiser, and the 2nd officer, after following me to the car and removing my pocket knife, sat in the back seat.

The driver called in my DL number and while he was waiting - asked work phone numbers, "was I wearing my seat belt" - etc.

When the dispatch returned to the radio - she said I was clear except for _____ pawn _____. (I didn't hear or understand the statement - but heard pawn.)

I asked the officer if that meant that I frequented pawn shops - and he said "no." At that time he finished writing the ticket and allowed me to leave.

I asked the second officer for my knife, and he said he'd throw it in the car for me - that he didn't feel right about giving a suspect a weapon. I opened my car door, the officer threw in the knife and returned to the cruizer. I entered my vehicle and departed to lunch.

/s/ Randy A. Hogue
Randy A. Hogue

Exhibit "A"